

Memorandum



Date: October 19, 2004

Agenda Item No. 7(M)(1)(A)

To: Honorable Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Amendment and Renewal of Lease Agreement with CVM Group, Inc. for Operation of Restaurant at Crandon Golf Course

RECOMMENDATION

It is recommended that the Board approve the Amendment and Renewal of the Lease Agreement between CVM Group, Inc. and the County for the operation of restaurant facilities at Crandon Golf Course for an additional ten (10) year term and an increase to the Percentage Payments to ten (10) percent of all gross receipts.

BACKGROUND

In July 1988 the County entered into a Lease Agreement for operation of restaurant facilities at the Crandon Golf Course with Mangrove Services, Inc. The Lease Agreement was later assigned through Bankruptcy Court Proceedings to CVM Group, Inc. and a related Amendment and Assignment was authorized by Resolution No. R-1523-92 on December 15, 1992. On June 18, 1996 the Board adopted Resolution No. R-714-96 authorizing execution of a Stipulation for Settlement related to the Lease Agreement.

In 1994 it was determined that the existing restaurant facilities did not meet building code requirements and would need to be demolished and new facilities built. During the period of demolition and construction, the County provided temporary facilities for the Lessee to continue to operate in order to sustain food and beverage services to golf course patrons. Despite the hardship of operating from trailers adjacent to the ongoing construction, the Lessee continued to provide quality services. Extensions were granted to the initial term of the Lease on a year-to-year basis during this six-year period.

The County has now completed the construction of the new Crandon Golf Clubhouse and the Lessee has occupied the restaurant facilities included in the clubhouse. The Lease Agreement contains provisions for a ten (10) year renewal which the Lessee has indicated its desire to exercise. The Agreement further contains provisions for periodic rental rate review.

The Crandon Park Master Plan approved by the Board by Resolution No. R-933-96 on July 18, 1996 requires that existing contracts must comply with the Crandon Park Master Plan upon renewal. One of the provisions of the Master Plan is that private commercial

operators on Crandon Park Lands pay as rent to the County ten percent (10%) of all gross receipts. The existing Lease provisions include requirements for a minimum rental guarantee of \$1,500 per month, but no percentage payment until more than \$800,000 in gross receipts is achieved by the Lessee. Under the former circumstances, the Lessee has never exceeded the threshold of gross receipts.

Approval of the ten percent (10%) of all gross receipts as rent will bring this lease into compliance with the Crandon Park Master Plan and increase revenues to the Crandon Golf Course that can be applied toward payment of debt service related to funding of the new clubhouse. Additionally, the Lease Amendment substitutes a new Exhibit B to properly reflect the new restaurant facility as the Premises Description attached to the Lease Agreement.

Attachments


Assistant County Manager



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: October 19, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(M)(1)(A)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☒ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(M)(1)(A)
10-19-04

RESOLUTION NO. _____

RESOLUTION AUTHORIZING AN AMENDMENT
TO AND RENEWAL OF THE CVM GROUP, INC.
AGREEMENT FOR OPERATION OF
RESTAURANT FACILITIES AT CRANDON GOLF
COURSE AND AUTHORIZING THE COUNTY
MANAGER TO EXECUTE SAME FOR AND ON
BEHALF OF MIAMI-DADE COUNTY

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Amendment and renewal of the Lease Agreement between Miami-Dade County and CVM Group, Inc. for the operation of restaurant facilities at Crandon Golf Course in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County and to exercise the renewal and termination provisions and all other rights contained therein.

The foregoing resolution was offered by Commissioner _____,
who moved its adoption. The motion was seconded by Commissioner _____,
and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson

Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro

Betty T. Ferguson

Joe A. Martinez

Dennis C. Moss

Natacha Seijas

Sen. Javier D. Souto

Jose "Pepe" Diaz

Sally A. Heyman

Jimmy L. Morales

Dorrian D. Rolle

Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 19th day of October, 2004. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency. mmc .

By: _____
Deputy Clerk

Mariela Martinez-Cid

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LEASE AMENDMENT

This Lease Amendment, made this _____ day of _____, 2004, by and between Miami-Dade County, hereinafter called the "County" and CVM Group, Inc. hereinafter called "the Lessee"

WITNESSETH:

WHEREAS, the County has entered into a Lease Agreement dated July 19, 1988, and commencing on September 1, 1988 for operation of a restaurant at the Crandon Golf Course, which Lease was later assigned from Mangrove Services, Inc. to CVM Group, Inc. through an order issued by Bankruptcy Court dated September 22, 1992 and a corresponding Assignment and Amendment to Lease approved by the Board of County Commissioners through Resolution R-1523-92 on December 15th 1992, and Resolution 714-96 approved on June 18, 1996 that authorized execution Stipulation for Settlement, and

WHEREAS, the Lessee desires to continue to operate the Links Grill Restaurant at Crandon Golf Course for an additional ten (10) year term as provided for in Paragraph 6 of the Lease Agreement titled "Renewals", and

WHEREAS the County has replaced the Crandon Golf Clubhouse with a new structure incorporating restaurant facilities, and

WHEREAS, Paragraph 10 of the Lease Agreement provides for Rental Rate Review upon said Renewal,

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties agree to execute the ten (10) year renewal as provided in Paragraph 6 and to amend the Lease Agreement as follows:

1. Paragraph 12 titled Percentage Fees shall be deleted in its entirety and the following language substituted:

12. Percentage of Monthly Gross Receipts: In addition to the Minimum Rental Guarantee, the Operator agrees to pay to the County, monthly, an amount equal to 10% (plus tax) of Monthly Gross Receipts as defined in Paragraph 13 titled Gross Receipts, to the extent that the Monthly Gross Receipts exceed the Minimum Rental Guarantee, hereinafter referred to as

"Percentage of Monthly Gross Receipts". Such payment shall be made by the tenth (10th) day of the month following the month during which the gross receipts were earned.

2. In addition, Exhibit "B" referenced in Paragraph 8 of the Lease Agreement and labeled Premises Description is deleted and a new Exhibit "B" as attached to this Amendment is substituted to reflect the new restaurant facilities.

3. Lessee agrees that it shall at all times comply with the Crandon Park Master Plan.

4. This Amendment to the Lease Agreement shall be effective upon the renewal date of October 1, 2004 and extend through the term of the Lease unless otherwise amended.

5. No other terms and conditions of this Lease are hereby amended or modified except as provided herein. The Lease remains in full force and effect as is hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, the parties hereto have caused their appropriate officials to execute this Addendum as of the date first written above.

ATTEST: Harvey Ruvlin
Clerk of the Board

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
George M. Burgess, County Manager

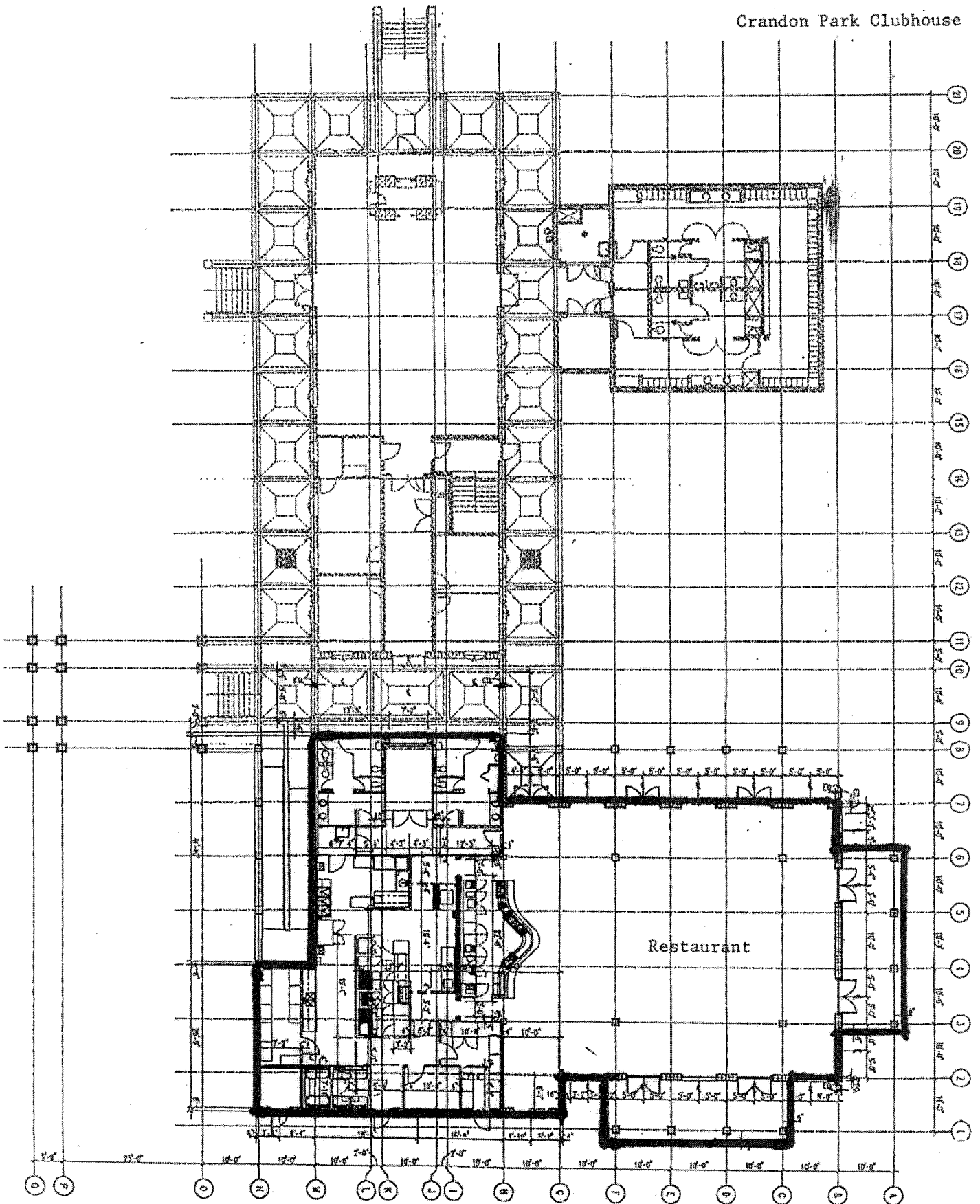
CVM GROUP, INC.

By: _____

By: _____

Approved as to form and legal sufficiency _____

Exhibit B
Restaurant
Crandon Park Clubhouse



RESOLUTION NO. R-1043-88

RESOLUTION AUTHORIZING EXECUTION OF LEASE AGREEMENT WITH GEORGE KUNDE FOR IMPROVEMENT AND OPERATION OF RESTAURANT AT THE LINKS OF KEY BISCAYNE; AND AUTHORIZING COUNTY MANAGER TO EXERCISE RENEWAL AND CANCELLATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board approves the Lease Agreement with George Kunde for the improvement and operation of the restaurant at the Links of Key Biscayne, which includes the right to assign the Lease Agreement to a partnership or corporation owned by George Kunde plus Mr. Steve Torcise, Mr. Sam Torcise and/or Mr. Jim Dunphy, subject to approval of the County Attorney, in substantially the form attached hereto; and authorizes the County Manager to execute the same for and on behalf of the County and to exercise renewal, extension and termination provisions contained therein.

The foregoing resolution was offered by Commissioner Beverly B. Phillips, who moved its adoption. The motion was seconded by Commissioner Sherman S. Winn and upon being put to a vote, the vote was as follows:

Barbara M. Carey	absent
Clara Oesterle	aye
Beverly B. Phillips	aye
James F. Redford, Jr.	aye
Harvey Ruvin	aye
Barry D. Schreiber	aye
Jorge E. Valdes	aye
Sherman S. Winn	aye
Stephen P. Clark	aye

The Mayor thereupon declared the resolution duly passed and adopted this 19th day of July, 1988.

DADE COUNTY, FLORIDA
BY IT BOARD OF
COUNTY COMMISSIONERS

RICHARD P. BRINKER, CLERK

By: RAYMOND REED

Deputy Clerk

Approved by County Attorney as
in form and legal sufficiency.

DAK

R-1042-78

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered in this 19th day of July, 1988, by and between METROPOLITAN DADE COUNTY, FLORIDA, (the "County"), and GEORGE KUNDE, (the "Lessee"),

WITNESSETH:

WHEREAS, the County owns, maintains and operates The Links of Key Biscayne (the "Park") by and through its Park and Recreation Department ("the Department"), for the recreation and enjoyment of the public, and

WHEREAS, the County has duly advertised for proposals and received proposals for the lease of a portion of the said park, for the purpose of operating the restaurant facilities, and

WHEREAS, Lessee submitted a final proposal on July 29, 1988 in response to the County's request for proposals ("Proposal"), which Proposal is filed with the County's Clerk of the Board and incorporated herein by reference and has been relied upon in awarding this Lease Agreement ("Lease" or "Agreement"), and

WHEREAS, the proposal of the Lessee was determined to be in the best interest of the County,

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

1. Purpose: Subject to deed restrictions, the County hereby leases to the Lessee, and the Lessee hereby accepts from the County a Lease for the food service space, described below in Paragraph 8 for the operation of a restaurant facility with breakfast, lunch, and dinner service, with alcoholic beverage, and ancillary sales and service operations, as may be approved by the Department. The County leases the space in an "as-is" condition and any improved service and/or facility shall be at the sole cost of the Lessee, unless otherwise agreed by the County. Initially approved menu and other items and services for sale or rent and their prices are attached as Exhibit "A".

The County makes no warranty, guaranty or representation that the space is suitable for Lessee's operation, that existing equipment and improvements are suitable for Lessee's operation; that the County will maintain surrounding property at the current level of service or maintenance or for its current use; that an operation subject to this Lease is feasible; that the County shall take any action to assist Lessee's operations; or that future development of the Park will not adversely effect Lessee's operation.

2. Exclusivity: Lessee's rights under this Agreement are exclusive only with the leased premises. Use of any parking is and shall remain nonexclusive. Nothing contained in this Agreement shall preclude the Department from providing itself or allowing others to sell, rent or gratuitously provide goods and services, including food and beverage items and services, anywhere in the non-leased portion of the Park. Additionally, the Department may provide such items and services on the leased premises during Special Events by the Department.

A Special Event shall be any activity so designated to Lessee by the Department in writing, at least 7 days in advance, which requires use of leased space by the Department for its purposes. Special Events shall be restricted to all or part of 20 days per year. The minimum rental guarantee payment shall be reduced on a pro rata basis for Special Events.

3. New Construction: The Department shall approve all construction, installation and use of facilities as provided in the attached Construction Rider which is hereby made a part hereof. Lessee shall bear all cost associated with such construction, installation and use. Lessee shall spend a minimum of \$250,000 for initial permanent improvements to land or buildings ("capital improvements") as represented within the Proposal within the leased premises (the "Facilities"). The construction of facilities shall be completed by the end of the third year from the date first written above ("date of this Agreement") and in accordance with the Construction Rider, attached and incorporated herein by reference. All real property improvements and attached fixtures shall become the property of the County upon termination of this Agreement. Lessee shall provide a report showing the total cost of initial improvements audited and prepared by an independent Certified Public Accountant ("CPA") who must provide the opinion that the costs shown are accurate and fairly represent the total spent according to current professional accounting and auditing standards. Such report shall be submitted not later than 90 days after the date, set by the Department, when construction of the Facilities is substantially complete, regardless of whether occupational or other licenses or a certificate of occupancy has been issued.

4. Term: The County hereby leases the premises described in Paragraph 8 hereof to the Lessee for an initial term beginning on the date agreed between the parties, but not later than September 1, 1988 ("Commencement Date") and ending 10 years after the Commencement Date.

5. Additional Services and Space: The Department, at its sole discretion, may allow the Lessee to provide additional recreational service and/or use additional or substitute space within the Park, upon such terms as the parties may agree. Any additional services must be associated with and be incidental to normal food service. However, any right to additional services and space by Lessee is subordinate to the Department's right to provide the additional service or use additional space itself and the County's right to contract with others. The County reserves the right to control food and beverage service in the Park outside the Premises.

6. Renewals: An initial renewal of ten (10) years may be exercised by the Lessee provided that:

- a. Lessee notifies the Department in writing, at least 6 months prior to the expiration of the limited term, at its intent to renew.
- b. That there are no defaults.

If the above conditions are not met or when the final year of the renewal is reached, then at the sole discretion of the County, this Agreement may be renewed after the initial term or first renewal, on a year-to-year basis and on such terms, not to be less beneficial to the County than original terms, as the parties may agree. However, in no event shall this Agreement be in effect for longer than 30 years.

7. Extensions for Capital Investment: The County Manager may approve extensions to this Agreement for improvements to real property made to the Park. These improvements shall be in addition to originally approved improvements regardless of cost,

shall not be repairs or replacements, and shall follow the same approval process as initially approved improvements, except that the Department shall have sole discretion in deciding whether any particular improvement shall qualify toward extension. The cost of all potentially qualifying improvements shall be verified by an audited statement prepared and submitted to the Department as for New Construction above. The determination of whether an improvement will be approved for extension and the limit of such extension shall be made prior to commencement of such improvement.

Qualifying improvements must be completed prior to the expiration of the current term. This Agreement may be extended at the rate of 2 years for each \$50,000 in approved and verified additional improvements to real property, measured in 1988 dollars according to Dodge or Mean's Reports or other acceptable source. Qualifying improvements may be less than \$50,000 individually and accumulate to the \$50,000 required for extension. All improvements to real property become property of the County upon termination or expiration of this lease. At the sole discretion of the County, this Agreement may be renewed on a year-to-year basis and on such terms, not to be less beneficial to the County than original terms, as the parties may agree. Together with the original term and extensions, defined below, this Agreement may not be renewed or extended so as to allow the total term to exceed 30 years from the commencement date.

8. Premises Description: The County leases to Lessee that portion of Key Biscayne Golf Course, 6700 Crandon Boulevard, Key Biscayne, Miami, Florida 33149, as shown on drawings and described in Exhibit "B".

9. Minimum Rental Guarantee: Lessee shall pay a minimum monthly rental of Two Thousand Dollars (\$2,000.00) to the County beginning on the first day of the month after the Commencement Date and continuing until such time as the rental rates for the premises are adjusted as provided below. Said Minimum Rent shall be due on the first (1st) day of each month in advance, without billing.

10. Rental Rate Review: The guaranteed rental rate(s) stated herein shall be subject to adjustment by Lessor at the end of the fifth (5th) year from the Commencement Date and each renewal or extension period thereafter. When such rental rates are established and approved by appropriate action of the Board of County Commissioners, this Lease shall be considered amended, and written notification shall be provided by the Department to the Lessee of the adjusted rate and effective date of the said rental rate(s) applicable to the leased premises.

11. Interim Rental Payments: The County agrees that Lessee shall take over existing food supplies and consumable goods at the purchase value. Lessee shall pay percentage total monthly gross receipts until the County had been reimbursed. This payment shall be in addition to all other payments.

12. Percentage Fees: In addition to the minimum monthly rental, the Lessee shall pay a percentage of gross receipts fee ("percentage fees") to the County, without billing. Calculation for such percentage fee shall begin on the first of the month following the Commencement Date. The percentage fees shall be, cumulatively:

<u>Percentage of Gross Receipts</u>	<u>When Annual Gross Receipts Are</u>
0%	less than \$800,000
2% of monthly food	from \$800,000 to \$1,000,000
3% of monthly beverage	from \$800,000 to \$1,000,000
6% of monthly food	from \$1,000,001 to \$2,000,000
8% of monthly beverage	from \$1,000,001 to \$2,000,000
7% of monthly food	over \$2,000,000
9% of monthly beverage	over \$2,000,000

plus a percentage of all monthly gross receipts from all other approved sources as agreed by the Department.

Such payment shall be made by the tenth (10th) day of the month following the month during which the gross receipts as defined in Paragraph 13 below, were earned.

13. Gross Receipts. The term gross receipts as used in this Agreement means all monies paid or payable to or considerations of determinable value received by the Lessee for sales made, transactions had or for services rendered, from all sources, in the operation of the Lease, regardless of when or where the order therefore is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash or credit basis or in consideration of any other thing of value; provided, however, that any taxes imposed by law which are separately and directly payable by the Lessee to a taxing authority shall be excludable for payment and reporting purposes. All items and services shall be recorded at the full approved price unless a higher amount is received, in which case the higher amount shall be used. Discounts given to customers and employees shall be recorded at the full price unless the Department gives specific, advance approval in writing, setting the amount to be excluded. Approved discounts shall be initially recorded at full price and adjusted in a separate transaction. The discounting transaction shall be in writing and shall show to whom a discount was given, why it was given, the amount of discount, the guest check number or other identifying reference to the initial transaction and signed by a manager. Under no circumstances, regardless of whether written approval is given for discounts, shall discounts totalling more than 5% of gross receipts for any month or 3% for any year be allowed. Employee may be excluded for up to the cost of the meal and is separate from above discount maximum.

14. Sales Tax: The Lessee shall be liable for the prevailing State of Florida Sales and Use Tax imposed on rent (currently at the rate of 5%) on the amounts payable to the County under this Agreement. This Sales and Use Tax shall be payable to the County which in turn will remit same, less authorized handling deductions to the State. Said tax is applicable to guarantee and percentage payments, unless otherwise determined by the State of Florida.

15. Payment of Fees: The Lessee shall pay all rental, fees and charges, and submit all reports required by this Lease to the following:

Park and Recreation Department
Financial Management Section
50 S.W. 32nd Road
Miami, FL 33129

(Checks shall be made payable to the "Dade County Board of County Commissioners".)

In the event Lessee fails to pay any of the rentals, fees or charges as required to be paid under the provisions of this Lease within ten (10) days after same shall become due, the payment shall be deemed delinquent and interest at the rate of 1½% per month shall accrue against the delinquent payment(s) until same are paid. Interest shall be charged from the date payment is due. This interest rate may vary at the determination of the Department. Implementation of this provision shall not preclude the County from terminating this Lease for default in the payment of rentals, fees or charges, or from enforcing any other provisions contained herein.

16. Reports and Records:

A. The Lessee shall maintain during the term of this Lease all books of account, reports and records customarily used in this type of operation and such records as are

necessary to document its activities pursuant to this Agreement and all monies collected hereunder, not limited to gross receipts. The form of all such records, cash registers, tapes, books, ledgers, journals, sales slips and invoices, installed or used for recording the operations of the Lessee under this Agreement shall be subject to the approval of the Department prior to commencement of operations, and subsequent recommendations for changes, additions or deletions.

B. On or before the tenth (10th) day following the end of each calendar month throughout the term of this Agreement, the Lessee shall furnish to the Department a report of gross receipts, the number of meals served (taken down by breakfast, lunch and dinner), alcoholic beverage sales, and other gross receipts by source during the preceding calendar month, on forms approved by the Department. This report shall be signed by the Lessee certifying to the accuracy of such gross receipts. Any percentage fees or charges due shall be payable with the submission of the report provided for in this Article.

C. Lessee shall submit to the Department at its own expense, within sixty (60) days following each twelve (12) month period of operation under this Agreement, a profit and loss statement, a balance sheet, and a special report of gross receipts prepared by an independent CPA. The special report shall show the correct gross receipts and payments due per month arising from the Lessee's operations under this Agreement. The CPA must provide the opinion that the reported information is accurate and fairly represents actual financial condition and gross receipts according to current professional accounting and auditing standards. The report due under this Paragraph shall, for the first reporting period, cover the period ending twelve months from the period end on the last day of a month in the event the Commencement Date shall be reported with the first report. Reporting periods may be adjusted with prior written approval of the Department. Accompanying the above report shall be a second report showing all improvement costs as required in Paragraphs 25 and a report attesting to expenditure in accordance with the approved Marketing Plan as required in Paragraph 19(E).

D. The Lessee shall allow the Department or any of the auditors of the County to inspect all or part of the compilation procedures, equipment and reports. Such inspection is at the sole discretion of the Department, during normal business hours.

E. All records of the Lessee necessary to verify any report set forth herein shall be available to the Department and the County's auditors at a reasonable location in Dade County, Florida, for a period of three (3) years after the end of any lease year.

17. Facilities:

A. The Lessee hereby agrees to submit for approval by the Department detailed plans and specifications for any anticipated leasehold improvements within sixty (60) days following the execution of this Agreement, and shall begin construction of the improvements within twenty (20) days from the date of approval of said detailed plans by the Department and receipt of necessary permits, unless a later date is specified by the Department. The Department may extend any time periods with proper justification (see Construction Rider).

B. The design, structure and all pertinent features of the facilities of the restaurant to be constructed by or for the Lessee shall be subject to change only upon the mutual consent of the Department and Lessee.

C. All equipment and personal property furnished by Lessee shall be of good quality and suitable for its purpose. The Lessee agrees to pay the County \$25,000.00

within 10 days approval of this Agreement for the equipment on the list attached as Exhibit C.

D. The Lessor shall give the County the right of purchase of any equipment within the leased premises according to procedures listed in Paragraph 46.

E. It shall be the responsibility of the Lessee to coordinate activities with the County during any construction and normal operations. Lessee shall not undertake any activity which interferes with the operation of the Park. Lessee shall request prior written approval of the Department for any activity likely to interfere with the operation of the Park.

F. The Lessee has inspected and hereby accepts the premises in an "as is" condition at the initiation of this Lease Agreement, and agrees to maintain said premises in the same condition, order and repair as at the Commencement Date, or better, excepting only reasonable wear and tear arising from the use thereof under this Agreement. Lessee shall be responsible for all repair and maintenance of any roof or wall which is shared with non-leased space.

G. The Department agrees that, if and when a sewer line connecting the restaurant to Crandon Park is required to be installed, the Department shall pay for or allow credit against rent for one-half of the cost of connecting in accordance with plans approved by the Department

18. Facility Manager: The Lessee shall hire and assign a full-time, qualified, experienced facility manager for its operations. The Department shall be advised in writing of the names, addresses, social security numbers, birth date and prior experience and Waiver and Release form as attached in Exhibit E of the manager(s). The Department shall review and approve all managers within 5 working days of receipt of above information, subject to receipt of background verification and the finding of acceptable background. Said facility manager or assistant manager will be physically available during normal hours of greatest use. During the hours when the manager is not on duty or available, there shall be a designated assistant manager. The manager and assistant manager shall be authorized representatives of the Lessee and empowered to act in all matters relating to the operation of the facility leased hereunder.

19. Departmental Approval: The Lessee agrees that it will obtain prior written approval from the Department in all of the following matters:

- A. Use of any type of vending machines, inside or outside of the building within the leased premises.
- B. Changes from originally approved improvements, signage, and graphics or signs placed on County property outside the premises.
- C. Equipment Lessee plans to install requiring any building modifications.
- D. Initial prices and changes thereto, including services and retail merchandising. Lessee shall provide breakfast, lunch and daytime snack food at moderate prices during daytime hours.
- E. Lessee's marketing plan. Lessee shall spend a minimum of \$ 20,000 annually for marketing, advertising and promotion in

accordance with their approved Marketing Plan. The Marketing Plan and Marketing Budget will be submitted at the beginning of each contract year for Department approval.

F. Any use of the name of Metro-Dade, the Department or Park.

Further, it is understood by the Lessee that should any of the above items be disapproved, Lessee may offer alternative solutions. The Department shall be allowed thirty (30) days to reach a decision in any of the above matters and failure to do so within such period shall constitute approval.

20. Department Approval of Change: The Department reserves the right with stated just cause to require the Lessee to change within a stated time any and all items contained in Paragraph 19 it deems in need of change, despite previous approval of same.

21. Public Contact of Lessee's Employees: Lessee's employees in contact with the public shall perform their duties in an efficient and courteous manner. Failure of an employee to do so shall be grounds for the Department to demand his or her removal from duties at the Facilities. All employees, with the exception of the facility manager and assistant manager, shall be distinctively uniformed or appropriately attired so as to be distinguishable as the Lessee's employees. All Lessee's managers and employees shall have appropriate qualifications and be trained in the performance of their respective duties.

22. Minimum Hours of Operation: Lessee shall begin full operations not later than 7 days after the Commencement Date. The facilities will be required to operate seven days a week during those hours of operation necessary to serve early breakfast, lunch and dinner, as approved by the Department. Sufficient attendants will be available to provide outstanding service. Prior to beginning operations, the Lessee shall submit a schedule of intended hours of operation to the Department for approval. The Department may require a change in hours of operation, if in the discretion of the Department, such a change is desirable in providing the best service to the public.

23. Lessee's Services:

A. Lessee shall operate the restaurant with alcoholic beverage/service and serve breakfast, lunch and dinner. The Lessee shall conduct its operations in an orderly manner so as not to annoy, disturb or be offensive to customers, patrons, or others in the vicinity of the Facilities. The Facilities shall be open to the general public. Special events or special programs which may restrict use of the Facilities by the general public shall require prior written approval of the Department, which approval shall be at the sole discretion of the Department.

B. The Lessee shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, customers and patrons, and upon objection of the Department concerning the conduct, demeanor or appearance of any such person, Lessee shall immediately take all necessary steps to correct the cause of such objection.

C. Lessee shall provide top quality products for sale and service, suitable for the style of menu and prices approved by the Department.

D. The Lessee shall not conduct any business or activity not specifically authorized by this Agreement, unless approved by the Department. It is expressly understood and agreed that the said operation shall not interfere with the public use of the area or

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infringe upon the normal method of operations of any other parties authorized to be in the Park. The Lessee agrees that a determination by the Department will be accepted as final in evaluating its activities which infringe on the rights of others and that it will fully comply with any decisions on this matter.

F. Lessee shall provide to the Department an emergency evacuation plan and hurricane plan.

24. Assignment, Subletting and Successors in Interest: It is not intended that the Lessee sublease the premises, in whole or any part, nor assign this Lease Agreement to any person, partnership or corporation. However, for cause acceptable to the County in its sole discretion, the County may allow a sublease or assignment. All subleases and assignments require prior written approval by the Board of County Commissioners of Dade County, Florida. (Also see: Paragraph 37, Ownership of Lessee.) No sublet or assignment shall be considered without submission of information, to the extent not less comprehensive than Lessee's Proposal, and executed Waiver and Release forms.

It is covenanted and agreed that all covenants, conditions, agreements and undertakings contained in this Agreement shall extend to and be binding on the respective successors and assignees as well as sublessees accepted by the County. The Department reserves the right to impose its rights and duties directly upon any successor without Lessee being informed of or included in the action, including but not limited to termination.

Regardless of the acceptance of any sublease or assignment, Lessee shall continue to be liable for all terms and conditions of this Agreement, unless the County specifically agrees to seek remedy against the party to an approved assignment.

25. Facilities, Equipment and Services Provided by Lessee: The Lessee, at its sole cost, shall provide and/or maintain within the leased premises:

- A. Cleaning and janitorial service in the leased area and within fifty feet of the leased area and solid waste removal.
- B. Devices or registers for recording original sales as approved in advance by the Department (see Paragraph 16A).
- C. All new construction, interior, exterior and landscape maintenance within the leased premises.
- D. Fire sprinkler system, as required by Dade County Code.
- E. Complete air handling system, as required.
- F. All internal finishing such as ceilings, walls, decorations, furnishings and floor coverings, and all show cases, racks, other display and sales facilities, including concession identifying signage, subject to prior approval of the Department.
- G. Connection of utilities to operating equipment.
- H. All operating equipment.
- I. Electrical distribution.

- J. Water facilities.
- K. Sewage collection and disposal facilities.
- L. Telephone, television, antennae and costs of television, telephone, antennae and related equipment need by Operator.
- M. Cleaning and stocking of restrooms.
- N. All interior and exterior maintenance and repair of facility.
- O. All plumbing fixtures.
- P. Pest control within and around operational areas.
- Q. Garbage and trash collection.

26. Equipment Installed by Lessee:

A. All equipment, furnishings, signage and advertising installed by the Lessee shall be in keeping with the appropriate standards of decor at the Facilities and must be approved by the Department prior to installation. The Lessee shall not install, remove or replace the equipment or furnishings with a value of more than \$200 without notification to, and prior to approval by, the Department. Annually, following the renewal installation, or construction of any additional equipment, furnishing and improvements, Lessee shall provide to the Department a statement setting forth the cost of all equipment, furnishings or improvements and the date upon which the construction, installation, or removal of such equipment, furnishings and improvements was completed.

No coin or currency-operated vending machines shall be installed or located within the premises unless deemed desirable for public service by the Department, in which event the Lessee may be requested to install specific types of vending machines.

B. Lessee agrees that all equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes.

C. Lessee shall not alter or modify any portion of the Facilities or the improvements constructed therein without first obtaining written approval from the Department following the Construction Rider procedures.

D. Lessee shall not sell, convey, mortgage, pledge, lease, finance or otherwise dispose of or encumber ownership of any of the equipment or furnishings on the leased premises.

27. Maintenance Responsibilities of Lessee; Appearance of Facilities: Lessee shall, at its sole cost and expense, keep and maintain the leased premises in a first-class condition during the term of this Agreement and any extension thereof. The provision of cleaning services and all maintenance and repair within the Facilities are the sole and exclusive responsibility of the Lessee.

28. Damages: Lessee shall repair all damage to the Park caused by the Lessee, its employees, agents, contractors, invitees, patrons or suppliers.

29. Utilities Within Leased Premises: Lessee shall maintain all utilities within the leased facilities, such as drains, sewer pipes, air conditioning, plumbing and electrical lines, services, outlets, and where required by the County, meters to monitor utility usage.

Lessee, at its own expense, will be responsible for connection of water, sewer and electric to the site of new construction. Separate metering for utilities will be required and expense to be paid by Lessee. Cost of utilities service is to be paid by Lessee.

In the event tht Lessee fails to convert metering of utilities to Lessee's direct payment, the Department may charge Lessee whatever amount it determines is necessary to cover all County costs associated with the failure to convert, including but not limited to a pro rata share of costs, administrative overhead, legal fees (if any), accounting costs, building costs, and handling costs. Such charges shall be payable upon bidding and Lessee shall pay immediately the total billed. The Department shall solely determine the appropriateness of any amount billed.

30. Quiet Enjoyment of Leased Property: The County covenants and agrees that so long as no default exists in the performance of Lessee's covenants and agreements contained herein, Lessee shall peaceably and quietly hold and enjoy the leased premises and all parts thereof free from eviction or disturbance by the County or any person claiming under, by or through the County. Except that the Department or auditors of the County shall make periodic of the leased premises, operations of the Lessee, equipment, furnishings, fixtures and decorations to determine whether the same are in compliance with this Agreement.

31. Indemnification: The Lessee does hereby agree to indemnify and save the County harmless from any and all claims, liability, losses and causes of action which may arise out of this Agreement or the Lessee's activities in the leased premises. The Lessee shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, at the County's request, in the name of the County when applicable and pay all costs and judgements which issue therefrom.

31. Liability for Damage or Injury: The County shall not be liable for any damage or injury which may be sustained by any party or persons on the leased premises other than the damage or injury solely caused by the negligence of the County.

32. Damage or Destruction of Premises: If either the leased premises or buildings are partially damaged, but not rendered unusable for the purposes of this Agreement, operations must continue in undamaged areas and damaged areas shall be repaired with due diligence by the Lessee from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the minimum rent payable hereunder for the period of Lessee's business interruption, if any, shall be made.

If the damage shall be so extensive as to render such premises unusable for the purposes intended, but capable of being repaired within thirty (30) days, the same shall be repaired with due diligence by the Lessee from proceeds of the insurance coverage and/or at its own cost and expense and a pro-rata adjustment of the minimum rent payable hereunder for the period of Lessee's business interruption, if any, shall be made.

In the event the said premises are completely destroyed or so damaged that they will remain unusable for more than thirty (30) days, neither the Lessee nor the County shall be under obligation to repair and reconstruct the premises. Adjustment of the rent payable hereunder shall be proportionately made up to the time of such damage or destruction, and the Lease Agreement shall cease and terminate. All adjustments which

are proper, including but not limited to restoration of the site to a clean, neat and usable condition shall be made accordingly from proceeds of Lessee's insurance and any remaining proceeds shall be divided 80% to the County and 20% to the Lessee. However, at the option of the County, and through negotiations pertaining to all matters for continuing the Lease Agreement, the Lessee may reconstruct the premises. Any changes to this Agreement must be approved by the Board of County Commissioners.

34. Ingress and Egress: Subject to rules and regulations, statutes and ordinances governing these use of the facilities, Lessee, his agents and servants, patrons and invitees, and his supplies of service and furnishers of materials, shall have the right of ingress and egress to and from the premises during the hours that the Park is open to the public to play golf. During hours before and/or after Park hours, ingress and egress will require that Lessee provide security for the Park acceptable to the Department.

35. Performance Bond

A. Construction - The Lessee shall obtain and deliver to the Department, not less than thirty (30) days after the date of this Agreement, a Completion and Payment Bond (Performance Bond) in favor of the County, with a surety with qualifications acceptable to the County. The Bond shall be for the full amount of work and shall remain in effect until the completion of and payment for the improvements, free and clear of all claims of mechanics, laborers and material-men.

At the sole discretion of the County, the County may accept an alternate form of guarantee fulfilling the purposes of the above Performance Bond.

B. Operations - The Lessee shall furnish a Performance Bond to the County within thirty (30) days after the date of this Agreement and each year thereafter, in the form attached hereto as Exhibit D, with a surety with qualifications acceptable to the County in an amount equal to six (6) times of the monthly rental guarantee. This Performance Bond will be conditioned solely upon the full and faithful performance of all covenants of this Agreement.

The Lessee may, in lieu of the Performance Bond, but subject to the above conditions, deposit with the County a noninterest-earning cash guarantee, acceptable Irrevocable Letter of Credit, or other acceptable guarantee in the amount of six (6) times the monthly rental guarantee.

36. Insurance: The Lessee shall maintain the following insurance during the term of this Agreement, with no deductible:

1. Comprehensive General Liability Insurance on a comprehensive basis, including Products Liability and Completed Operations, Broad Form Property Damage, Contractual Liability and Host and Legal Liquor Liability in a form acceptable to the County, in an amount not less than \$1,000,000 per occurrence, combined single limit for bodily injury and property damage. Policy shall be endorsed to show Metropolitan Dade County as an additional insured.
2. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Agreement in an amount not less than \$500,000 combined single limit for bodily injury and property damage.

3. Worker's Compensation Insurance - as required by Chapter 440, Florida Statutes.
4. Contractual Liability Insurance - Covering all liability arising out of the terms of this Agreement.
5. Fire and extended coverage covering 100% of the replacement cost of all property, landscaping, structures, including wind and water damage, vandalism, malicious mischief, and naming the County as an additional payee.
6. The Lessee shall provide or cause its contractor to provide Owner's Protective Liability Insurance in an amount not less than \$ 100,000 , and during the construction required by Paragraph 5 of this Agreement, and shall provide Builder's Risk Insurance and any other insurance or security that may be required.

Lessee agrees to amend the above coverage upon notice to do so by the County. Any notice to change coverage must include a statement explaining why a change is required.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Lessee.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength:

The Company must be rated no less than "A" as to general policyholder's rating, and no less than "Class X" as to financial rating, in accordance with the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

Compliance with the foregoing requirements shall not relieve the Lessee of any liability and obligation under this section or under any other section of this Agreement.

The Lessee shall furnish Certificates of Insurance to the Department within 30 days after the date of approval of this Agreement, which Certificates shall clearly indicate that the Lessee has obtained insurance in the type, amount and classifications as required for strict compliance of the contract. Insurance shall not be cancelled or modified without thirty (30) days prior written notice to the Department.

37. Ownership of Lessee: The ownership and management of Lessee is very important to the County. Therefore, the County reserves the right to review and accept or reject any person or business owning or managing any portion of the Lessee. Lessee shall submit a Waiver and Release (see Exhibit E) form for any new owner, director, officer or key manager. This Agreement shall be terminated any time 10% or more of the ownership of the Lessee has not been specifically approved in writing by the Department. The County

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and/or Department shall reject any proposed owner or change in ownership for any reason the County and/or Department believes to be in the best interests of the public. Lessee agrees to provide a true and accurate list of all owners of the Lessee, showing the type and amount of ownership of each owner within 24 hours of notice delivered by the Department to the Lessee at Facilities. If Lessee's stock is listed on a major stock exchange, County and/or Department may wholly or partially exempt Lessee from the requirements of this paragraph.

This provision shall not apply to the assignment of this Agreement to a corporation or partnership owned in the majority by George Kunde, Steve Torcise, Sam Torcise and/or Jim Dunphy in a form acceptable to the County Attorney and the Department and accomplished within 120 days of the date of this Agreement.

38. Non-Discrimination:

A. That Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, covenant and agree that:

1. No person on the ground of race, color, religion, national origin, age or sex shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, religion, national origin, age or sex shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination.
3. That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the Department of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. That in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the concession and re-enter and repossess said facilities thereon and hold the same as if said concession had never been made or issued. This provision shall not be effective until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appeal rights.

C. Lessee shall not discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to hiring, tenure, terms, conditions or privileges to employment because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national origin or ancestry.

39. Rules and Regulations: The Lessee will observe, obey and comply with all rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Lessee's operations under this Agreement.

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40. Payment of Obligations:

A. Lessee shall pay all taxes and other costs lawfully assessed against its leasehold interest in the leased premises, its improvements and/or its operations under the Agreement provided, however, that Lessee shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted and pursued in a timely fashion to determine the validity of such taxes and/or other costs.

B. The Lessee shall procure, at the cost of the Lessee, all permits, licenses and the like required for this operation and performance under this Agreement.

41. Facility Repairs, Alterations and Additions by the County: The County shall have the right, without limitation, to make any repairs, alterations and additions to any structures and facilities, including the Facilities leased under this Agreement, free from any and all liability to the Lessee for loss of business or damages of any nature whatsoever during the making of such repairs, alterations and additions

42. Health and Safety Conditions: The Lessee shall insure that its operations and facilities are continuously in compliance with all health and safety laws, rules and regulations (health and safety laws"). Lessee shall immediately correct any condition in violation of health and safety laws. If such violation is not capable of being immediately corrected, Lessee shall isolate such condition from access and begin immediate correction and complete correction in the shortest possible time. If the Facilities are not brought in compliance within 14 days or violation of the health and safety laws is so significant that are closed by appropriate authority, then this Agreement shall terminate.

43. Default by Lessee and Cancellation by County: The occurrence of any of the following shall be an Event of Default and cause this Agreement to be terminated in accordance with the following notice and time to cure provisions:

A. Termination upon notice without right or time to cure:

1. Abandonment and/or discontinuation of operations for more than 24 hours, including without limitation, closure of all or a significant portion of the facilities for appropriate authorities for health and safety law violations.
2. The discovery of any misstatement of fact in the Lessee's proposal which, in the sole opinion of the County, materially affects the basis on which Lessee was selected for award of this Lease Agreement.
3. Unapproved change of 10% or more of ownership of Lessee and/or failure to submit a true and accurate list of owners within 24 hours of notice delivered by the Department to the Lessee at the Facilities. Failure of Lessee to submit Waiver and Release form for any new owner, director, officer or key manager.

B. Termination upon notice after seven (7) calendar days written notice is sent by registered or certified mail or hand delivered to the Lessee specifying the amount and/or type of payment(s) in default or non-receipt of required reports, unless the default(s) are cured within the 7 day period.

C. Termination on notice after fourteen (14) days written notice sent by registered or certified mail to the Lessee, unless the same shall have been corrected within such period:

1. Non-performance of any covenant of this Agreement and failure of the Lessee to remedy such breach.
2. The conduct of any activity, business or the merchandising of any product or service not specifically authorized herein.
3. A final judicial determination that litigation instituted by the Lessee against the County was groundless.

The County shall have the right, but not the obligation, to cure any default by Lessee, after the above notice, and charge the full cost (including, but not limited to, actual costs, labor, fringe benefits, administrative overhead) to Lessee. Such charges are payable upon billing.

44. Default by County and Termination by Lessee: The occurrence of the following shall be an Event of Default and cause this Agreement to be terminated in accordance with the following notice and time to cure provisions.

Termination on notice after sixty (60) calendar days written notice sent registered or certified mail or hand delivered to the Department, of the occurrence of one or more of the following:

A. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the facilities for intended purposes, and the remaining in force of said injunction for period of more than sixty (60) consecutive calendar days.

B. A breach by the County of any of the terms, covenants or conditions contained in this Agreement and the failure of the County to remedy such breach for a period of sixty (60) consecutive calendar days after receipt of written notice sent by registered or certified mail from the Lessee of the existence of such breach.

C. The assumption by any governmental agency, of the operation, control or use of the facilities, or any substantial part, or parts, thereof in such a manner as substantially to restrict Lessee's operations for a period of sixty (60) consecutive calendar days or more.

45. Vacating Premises at Termination: The Lessee within seven (7) calendar days following the termination of this Agreement, shall forthwith remove all of its personal property not acquired under the terms of this Agreement. Any personal property of Lessee not removed in accordance with this paragraph may be removed by the Department for storage at the cost of the Lessee or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Lessee for the safekeeping of Lessee's personal property. Upon termination of this Agreement and the removal of all personal property by Lessee, the Lessee shall restore said premises to neat, clean and habitable condition.

It is the intention of the parties to this Agreement that all furnishings and equipment purchased or leased by Lessee, except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be and will always remain, the personal property of the Lessee.

Upon the termination of this Agreement and the removal of all personal property by Lessee, the Lessee shall restore said Premises to a neat, clean and safe condition.

The Department shall have the right upon the termination of this Agreement to retain any portion of the Lessee's personal property and pay to the Lessee the undepreciated value thereof.

For purposes of this section, equipment and furnishings shall be depreciated on a straight line basis at twenty percent (20%) a year and draperies, floor and ceiling coverings and the like at thirty-three and one-third percent (33 1/3%) a year. Building improvements become property of the County upon termination or expiration of the Agreement.

46. Approvals: Unless provided otherwise, whenever prior approvals are required hereinabove by either party, such approvals shall not be unreasonably withheld.

47. Indulgence Not Waiver: The indulgence of either party with regard to any breach or failure to perform any provision of this Agreement shall not be deemed to constitute a waiver of the provision or any portion of this Agreement, either at the time of the breach or failure occurs or at any time throughout the term of this Agreement.

48. Notices: Unless otherwise allowed, any notices submitted or required by this Agreement shall be sent by registered or certified mail and addressed to the parties as follows:

To the County: Director
 Park and Recreation Department
 50 S.W. 32nd Road
 Miami, Florida 33129

To the Lessee: George Kunde
 9765 S.W. 184 St.
 Miami, FL 33157
 ATTN: Mr. Jim Dunphy

or to such other address as either party may designate in writing.

49. Attorneys' Fees: In any dispute between the County and Lessee, the prevailing party shall be entitled to recover legal and administrative costs, including but not limited to costs of employees and others hired in connection with a dispute.

50. Interpretations: This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and supercedes all prior verbal or written agreements between the parties with respect thereto. This Agreement may be amended only by written document, properly authorized, executed and delivered by both parties hereto. For the County, appropriate authorization shall be construed to mean appropriate formal action by the Board of County Commissioners. This Agreement shall be interpreted as a whole unit and section headings are for convenience only. All interpretations shall be governed by laws of the State of Florida. Exhibits "A," "B", "C," "D," "E," the Construction Rider are attached and hereby made a part of this Agreement.

Waiver of any breach shall not constitute waiver of any other breach. Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the appropriate officials, as of the date first above written.

ATTEST:

DADE COUNTY BOARD OF
COUNTY COMMISSIONERS

Richard P. Brinker

By: Elizabeth Adorno
Deputy Clerk

By: Joaquin G. Avino
County Manager

By: Karen A. Cramer
By: [Signature]

LESSEE:

By: George Kunde

CONSTRUCTION RIDER

Lessor: Metropolitan Dade County

Lessee: George Kunde

Premises: Key Biscayne Golf Course Restaurant

Date: _____, 198__

This Construction Rider is attached to that certain Lease Agreement (the "Agreement") between the above referenced parties covering certain premises located in the Key Biscayne Golf Course, Miami, Florida, more particularly described in Paragraph 8 of the Agreement (the "Premises"). Words and phrases used in this Construction Rider shall have the same meanings as in the Agreement unless specifically provided otherwise. If there is any conflict between the provisions of this Construction Rider and the provisions of the Agreement, the provisions of this Construction Rider will prevail.

I. CONSTRUCTION OF BUILDING AND IMPROVEMENTS ON THE PREMISES.

The building and other improvements that Lessee is to construct on the Premises shall be constructed in accordance with the provisions of this Section I and Lessee shall expend not less than \$250,000.00 in constructing such buildings and improvements, and for furnishings, fixtures, equipment, exclusive of insurance premiums, premiums for performance and mechanic's lien bonds, interest paid on financing, lender's fees for interim and permanent financing, takeout and standby fees and mortgage brokerage fees. Lessee shall have 5 months from the date of the Agreement to complete plans, specifications, construction and installation of equipment.

A. Preliminary Plans and Specifications. Within 60 days after the Department notifies Lessee that the County has approved the Agreement, Lessee, at its cost, shall have prepared and delivered to Department five (5) "Preliminary Plans," including one Mylar set for the construction of the building, access, parking, and related improvements ("Lessee's Project") on the Premises prepared by an architect or engineer licensed to practice as such in Florida, which Preliminary Plans shall include and show, without limitation, preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from the Premises, curbs, gutters, parkways, lighting, design and locations for outdoor signs, storage areas, landscaping, and structures all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable the Department to make an informed judgment about the design and quality of construction and about any effect Lessee's Project shall have on the surrounding area. Such preliminary plans shall be based on conceptual plans previously submitted by Lessee to Department. Lessee's Project shall be constructed within the exterior property lines of the premises; provided that required work beyond the Premises on utilities, access and conditional use requirements will not violate this provision. Lessee's Project shall be compatible with the outdoor setting in the surrounding area.

Within 60 days after Department receives preliminary plans as required in the preceding paragraph, Department shall either approved of them or deliver to Lessee specific objections. Lessee shall exercise reasonable diligence in attempting to resolve any objections by Department to the Preliminary Plans.

If the parties are unable to resolve any objections by the Department to the Preliminary Plans within 40 days after Lessee has received Department's objections, either party shall have the election to thereafter terminate the Agreement upon notice to the other party, the parties being thereafter relieved of any liability hereunder and under the Agreement

B. Final Plans and Permits. Within 30 days after the Preliminary Plans are approved between the parties as provided in Section IA, Lessee, at its cost, shall cause to be prepared and delivered to Department five (5) sets, including one Mylar set, of final plans and specifications and working drawings ("Final Plans") covering Lessee's Project, which Final Plans must be consistent with the approved Preliminary Plans.

This Agreement is further conditioned upon Lessee being able to obtain any and all permits, licenses, certificates, and other entitlements for use (hereinafter collectively referred to as "permits") required for the construction and operation of any buildings and improvements on the Premises without the imposition of conditions that are unsatisfactory to Lessee, in its reasonable discretion.

Not later than the date that Lessee delivers copies of the Final Plans to Department as required in this Section IB, Lessee shall commence seeking from all governmental agencies having jurisdiction over the Premises and Lessee's Project all such required permits, and Lessee shall exercise due diligence in attempting to obtain such permits.

Subject to the timing requirements contained in the following paragraph, the obtaining of any such permits shall not be considered as complete until any review and/or appeal is finally determined by the highest body authorized to determine same or until the time for such appeal or review has expired, whichever date is later. If suit or other proceedings are brought to invalidate any permit, the obtaining of the permit shall not be considered as complete until final judgment, decree, or other appropriate decision has been entered and the time for appeal therefrom shall have expired, or if any appeal has been taken, until the appeal has finally been determined.

If Lessee is unable to obtain such permits within 180 days from the date Lessee delivers copies of the Final Plans to Department as herein required, either party shall have the election to thereafter terminate the Agreement upon Notice to the other party; provided, if Lessee is unable to obtain such permits within such period of time due solely as a result of delays caused by such governmental agencies other than the Department, such period of time shall be extended as a result thereof until such permits have been obtained. Except, if such permits are not obtained within 270 days from the date Lessee delivers copies of the Final Plans to Department or if Lessee or Department determine that the Lessee's Project cannot be completed within 15 months of the date of the Agreement, notwithstanding the reason therefor, or by such deadline as parties may reasonably agree, either party shall have the election to thereafter terminate the Agreement upon notice to the other party. Upon termination there shall be no further obligation on the part of the Lessee or the County.

When Lessee obtains all such permits it shall deliver copies of them to Department.

C. Commencement and Completion of Construction of Lessee's Project. Within 15 days from the date that Department receives copies of the permits and authorizations covering construction of Lessee's Project as provided in Section IB, Department shall deliver possession of the Premises to Lessee in the condition that is

required by Section IIA, and Lessee shall immediately thereafter commence construction of Lessee's Project and diligently pursue completion thereof. The construction of Lessee's Project shall be in accordance with the Final Plans and subject to the provisions of Section ID. The Final Plans shall not be changed and/or modified without Department's consent, which consent shall not be unreasonably withheld or delayed.

All work in connection with the construction of Lessee's Project shall be performed in conformity with the Final Plans and shall comply with all applicable governmental permits, authorizations and laws.

Lessee shall pay for the cost of constructing access, parking, public restrooms with outside access and bringing utilities, which must be placed underground, to Lessee's Project. All items of additional construction shall be included in the Preliminary Plans and in Final Plans. These items of additional construction shall be separately approved by Department as to design, cost, and proof of payment and shall be constructed in accordance with Final Plans.

Lessee agrees that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, national origin, religion, age or sex shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination. That in the event of breach of any of the above non-discrimination covenants, the Department shall have the right to terminate the Lease and to avail itself of all remedies set forth therein. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appeal rights.

Neither Lessee nor any contractor shall discriminate against any employee or applicant for employment to be employed in the performance of the contract with respect to his hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, race, color, religion, national origin, age, sex or ancestry. All construction contracts shall include the above non-discrimination provisions.

Lessee's obligation to commence construction of Lessee's Project and diligently pursue completion thereof shall be subject to delays resulting from causes beyond the reasonable control of Lessee including, without limitation, strikes, acts of God, inclement weather, unavailability of materials, and like matters.

Upon completion of construction of Lessee's Project, Lessee shall, at its cost, cause a survey of the Premises and Lessee's Project and deliver to Department "as built" drawings accurately reflecting Lessee's Project on the Premises. Both parties agree to execute and attach to this Lease a new Exhibit B showing the exact location of Lessee's Project on the Premises.

D. Provisions Applicable During Construction of Lessee's Project. In addition to the provisions of the Lease, the following provisions shall be applicable during the period of time that Lessee constructs Lessee's Project:

(1) Lessee shall notify Department of Lessee's intention to commence construction of Lessee's Project at least two (2) days before commencement thereof or delivery of any materials.

(2) All construction shall be performed by licensed contractors reasonably approved by the Department. Lessee shall furnish Department with a true copy of Lessee's contract with the general contractor showing a breakdown of costs, and with evidence of such general contractor's financial condition and shall obtain Department's approval thereof which shall not be unreasonably withheld or delayed. The contract shall give Department the right, but not the obligation, to assume Lessee's obligations and rights under that contract if Lessee should default.

(3) Prior to the commencement of any work by Lessee, Lessee shall furnish Department with a bond, as described below and in the Agreement, approved by Department, which approval shall not be unreasonably withheld. The bond shall be that of a responsible surety company licensed to do business in Florida, in an amount not less than the cost of construction of Lessee's Project as determined by Department and shall remain in effect until the entire cost of Lessee's Project shall have been paid in full. The bond shall provide the following, without limitation:

(a) That it is conditioned to secure the completion of Lessee's Project free from all liens and claims of contractors, subcontractors, mechanics, laborers and materialmen;

(b) That the construction work shall be effected by Lessee, the general contractor or, on their default, the surety; and,

(c) That the surety will defend and indemnify Department against all loss, cost, damage, expense and liability arising out of or connected with the construction of Lessee's Project.

(4) Lessee shall take out and maintain so-called "builder's risk" or "course of construction insurance" insuring Lessee's Project during the period of construction of Lessee's Project in form and amounts reasonably satisfactory to Department, and shall take out and maintain the other insurance that is required by the Agreement. The insurance required herein shall comply with the provisions of the Agreement. Certificates evidencing such insurance shall be provided prior to commencement of work.

(5) No liens shall be attached to the Premises or any part thereof.

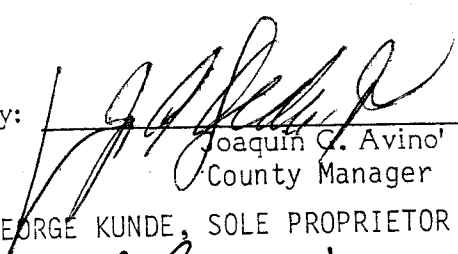
II. DEPARTMENT'S CONSTRUCTION OBLIGATIONS

A. Conditions of Premises. Department shall deliver physical possession of the Premises to Lessee on the date that Department is required to deliver possession as required by Section IC in an "as is" condition so that Lessee may commence improvement and operation thereon.

B. Liquidated Damages. It is mutually acknowledged that the assessment of specific damages for the inability to construct the Lessee's Structure would be too difficult to determine and that the provisions for liquidated damages contained herein are intended to compensate the Department for its efforts in assisting the completion of the Project. No liquidated damages shall accrue to this Lessee.

METROPOLITAN DADE COUNTY
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____


Joaquin G. Avino
County Manager

GEORGE KUNDE, SOLE PROPRIETOR

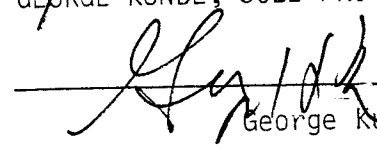

George Kunde

EXHIBIT "A"

INITIALLY APPROVED ITEMS
AND SERVICES AND PRICES

INITIAL IMPROVEMENTS

32

PROPOSED MENU

This initial menu reflects food offered at the beginning phase of our opening (lower level). In concert with upgrading the upper level, we will have a totally separate "Upstairs" dinner menu which will offer an extended grouping of fresh seafood, meat, poultry and other popular items.

The following menu will be medium priced at \$3.75 to \$9.95 for lunch, and \$6.95 to \$14.25 for dinner.

Appetizers

Clams Casino
Oysters Casino
Spiced Shrimp
Shrimp Cocktail
Clams on Halfshell
Steamed Clams
Oysters on Halfshell
Steamed Oysters
Conch Fritters
Stone Crabs in Season

Soups

New England Clam Chowder
Conch Chowder
Soup of Day

Salads

Seafood Combo
Spinach Salad
Salad Julienne (Chef Salad)
Crab Salad Platter
Chicken Salad Platter

Sandwiches

Turkey Club
Ham and Cheese
Roast Beef (cooked on premises)
Rueben
Burger (plain)
Cheese Burger
Bacon Cheese Burger
Crab Cake
Shrimp Salad
Chicken Salad
Tuna Salad
Steak & Cheese
Cuban Sandwich

Entrees

Crab Imperial
Stone Crabs
Maine Lobster
Florida Lobster
Catch of the Day
Shrimp and Scallops
New York Strip
Filet Mignon
Chicken Fricasse

Evening discount specials, such as:
Lobster Night, Pata Night, Stone Crab Night, etc.

Capital Improvements will be introduced in phases and with as little interference in overall operations as possible.

Phase One will include an elevator and restrooms for the restaurant's upper level. This will occur within 18-36 months and will meet County Handicap requirements.

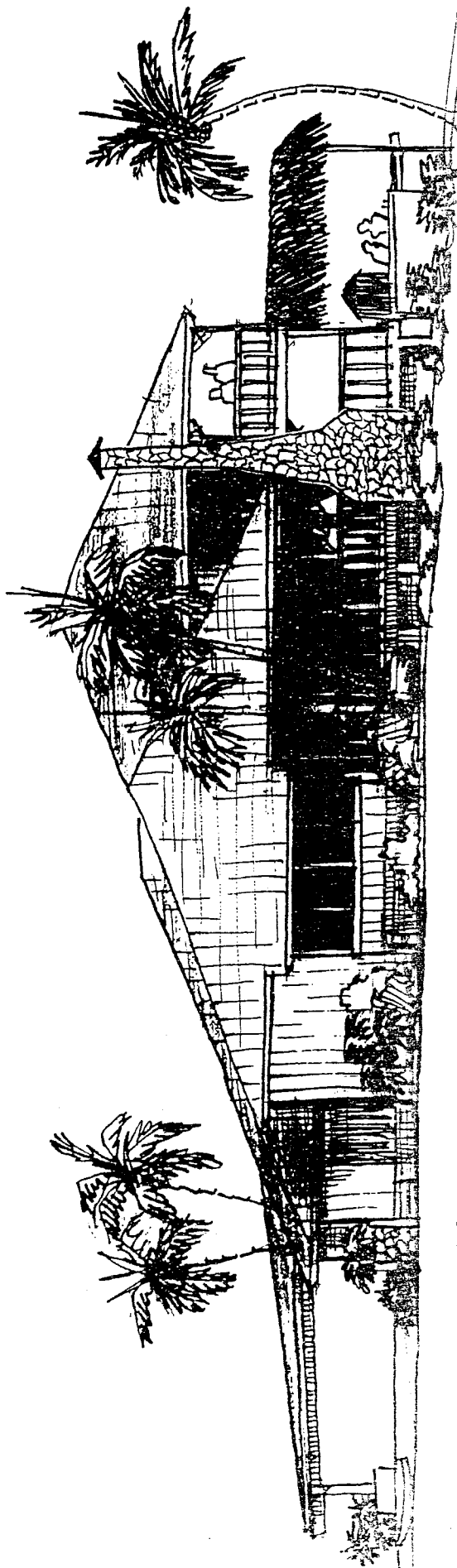
Phase Two (36-60 months) will be a redesign of the lower level space including the bar. This phase will allow for maximum utilization of workable area during phase Three.

Phase Three (60 months +) Expansion of the super structure to allow more overall restaurant /banquet space to accommodate business growth. The architectural drawings and schedule will follow.

The cost for the elevator and rest rooms will be over \$200,000 while the second and third phases will cost close to 2.2 million.

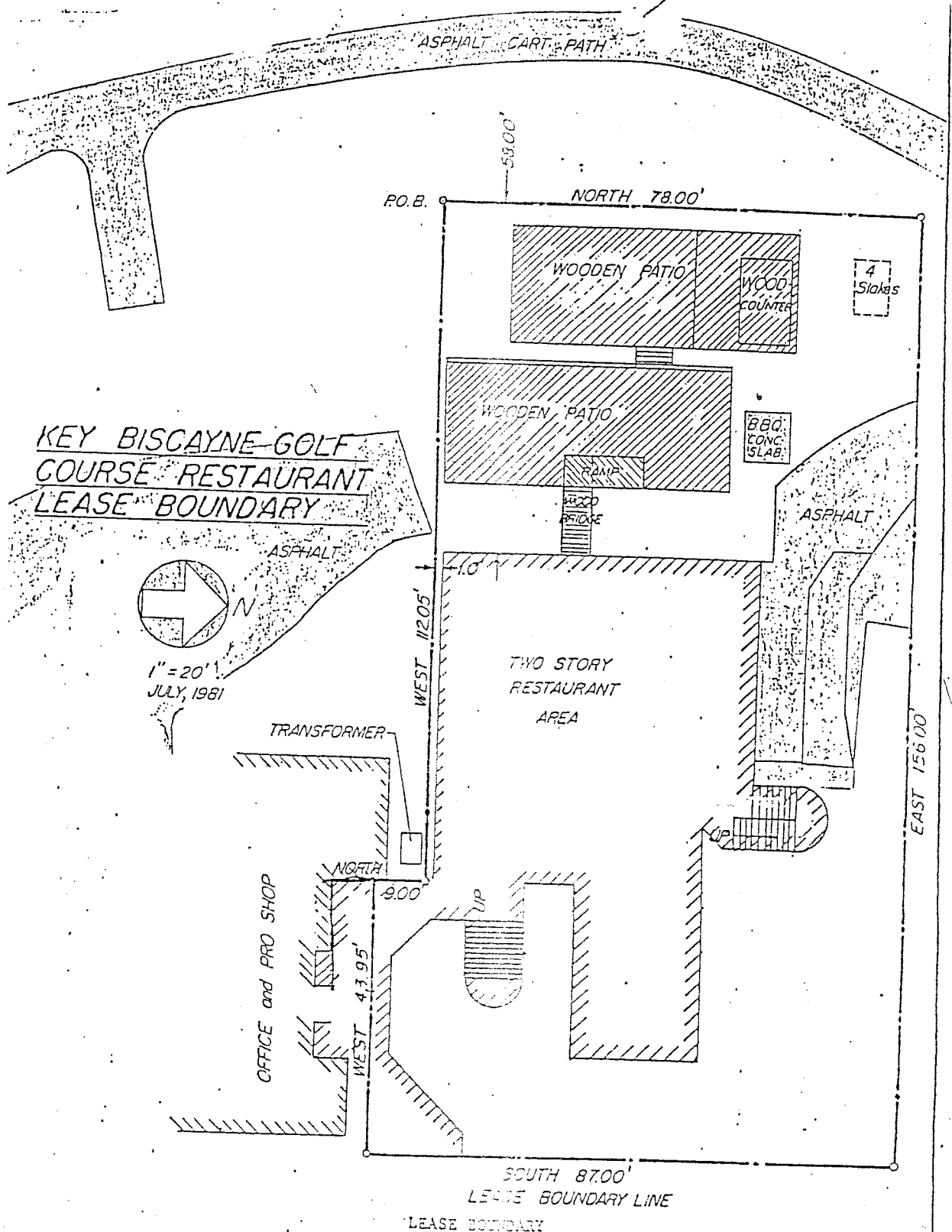
RICKENBACKER'S

KEY BISCAVNE, FLORIDA



NORTH ELEVATION

EXHIBIT "B"
DESCRIPTION OF PREMISES



Begin at a point that is 58.00 feet west and 1.00 foot south of the southwest corner of the restaurant portion of the club house located on the Key Biscayne Golf Course; thence run northerly along a line that is 58.00 feet west of and parallel to the west wall of said restaurant for a distance of 78.00 feet to point; thence run easterly on a line that is north of the north wall and fence of said restaurant and perpendicular to the last described line for a distance of 156.00 feet; thence run southerly on a line that is east of the east wall and fence of said restaurant and perpendicular to the last described line for a distance of 87.00 feet to a point in the entrance way to said restaurant; thence run westerly through said entrance way along a line that is south of the south wall of said restaurant and perpendicular to the last described line for a distance of 43.95 feet to a point on the easterly side of the connector wall between said restaurant and the pro shop; thence run northerly along said connector wall and perpendicular to the last described line for a distance of 9.00 feet to a point; thence run westerly along a line that is south of the south wall of said restaurant and is north of a transformer pad and perpendicular to the last described line for a distance of 112.05 feet to the point of beginning. All being in Section 29, Township 54 South, Range 42 East, Dade County, Florida.

EXHIBIT "C"
EQUIPMENT LIST

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EQUIPMENT LIST

RICKENBACKER'S

<u>Location</u>	<u>Item</u>	<u>Dade County Property No.</u>
Snack Bar	1 Sandwich Grill - Toastwell	None
	1 Coffee Maker - Silex	None
	1 Microwave - Sharp	None
	8 Bar Stools - Wood	None
	22 Patio Tables - Wood	None
	87 Patio Chairs - Metal	None
	1 Hot Dog Grill	443792
	1 Cash Register - Sharp	532176
	1 2 Keg Beer Cooler	433241
	1 Ice Bin 5/5	88974
	1 5/5 Sink	433249
	1 Refrigerator 2 Dr	451416
	1 Outdoor Grill - Lazwan	433253
1 FL Bar - Dining Room	72 Chairs Arm	
	17 Tables	None
	17 Bar Stools	None
	1 TV - 25" Emerson	None
	2 2 Dr Beer Coolers	None
	1 Check (Guest) Printer NCR	None
	1 TV 19" Gen. Elect.	None
	2 Speakers - Marantz	None
	1 TV - 19"	None
	2 Speakers - Peavy	None
	1 Speaker - Marantz	None
	1 TV 19" - RCA	None
	2 JVC Turntables	None
	2 Tape Decks	None
	1 Sound Mixer	None
	1 10" Tape Deck	None
	1 Power Amplifier	None
	1 VCR Cash Register	189900
	1 NCR Cash Register	188053
	1 Piano Spinnet w/stool - Baldwin	120432
1 FL - Kitchen	1 Iced Tea Maker	None
	1 S/S Dish Cabinet/Table	None
	1 S/S Dish Counter/Table	None
	1 S/S Dish Counter/Table	None
	3 S/S Tables	None
	1 Refrigerator 4 Dr Traulson	None
	1 S/S Table	None
	1 Time Clock - Cincinnati	None

EQUIPMENT LIST

RICKENBACKER'S

<u>Location</u>	<u>Item</u>	<u>Dade County Property No.</u>
	1 S/S Refrigerator Reach In	None
	1 Bunn O Matic Coffee Maker 5 Burner	24691
	1 Bun Warmer - Toastmaster	108268
	1 Slicer	466706
	1 Dishwasher Mach Assy	106702
	1 Popcorn Machine 24424424	475913
	1 Mixer, Hobart	125589
	1 Mixer, Hobart	125590
1 FL - Delivery/Storage Area	1 Walk In Refrig/Freezer	
	1 Walk In Refrig	None
	1 Walk In Refrig/Freezer	None
	1 Ice Maker Scotsman	None
	1 Ice Maker	None
	1 Ice Maker/Flaker - Scotsman	106789
	1 Crystal Tips Ice Machine	447485
	1 S/S Sink	433244
	1 Cash Register Computer CPU/Printer	122661
	1 A/C Window Unit	532949
2 FL - Dining Room	1 Register - NCR	None
	1 Beverage Cooler 3 Dr	None
	1 S/S Ice Bin	None
126	Chairs Velour	None
30	Tables	None
6	Bar Stools	None
4	Speakers - Altec	None
1	Central A/C 25T (New) Temptronic	None
2	Espresso Units	None
1	S/S Sink	466709
1	Bunn O Matic Coffee Maker	106294
1	Refrigerator - GE (Perlick)	464609
2 FL - Kitchen	1 Food Warmer 4 Lamp	None
	1 NCR Printer	None
	1 Steam Table/Server S/S	None
	1 Convection Oven - Vulcan	None
	1 Charbroiler 3 Burner	None
2	Range/Oven 4 Burner	None
1	Salamander Broiler	None
1	Microwave	None
1	S/S Refrigerator Trowlson 2 Dr	106700

EQUIPMENT LIST

RICKENBACKER'S

<u>Location</u>	<u>Item</u>	<u>Dade County Property No.</u>
	1 S/S Refrigerator Trowlson 6 Dr	106705
	1 S/S Sink	433249
	1 S/S Salad Table/Refrigerator	106710
	1 S/S Refrigerator Trowlson 3 Dr	106704
	1 S/S Refrigerator Serving Unit	433248
	1 S/S Refrigerator Reach In	125742
	1 Bun Warmer, 4 Dr Toastmaster	126039
	1 Oven, 2 Dr Gas Snorkel	466707
Office	2 1 Fl Dr Chairs	None
	1 2 FL Dr Chair	None
	1 Safe Hayman	None
	1 Typewriter IBM III	None
	1 Copier Saxon - Rental (Lease)	None
	1 VCR - Sony	None
	3 Desks	None
	1 Satellite Locator	None
	1 Drake Earth Station Receiver	None
	1 Satellite Disk (outside)	None
	1 Cash Register - Sharp	475986
	1 A/C Frederich - Wall	537907
Miscellaneous	Carpeting	None
	Kitchen Floor Mats (4)	None
	S/S 7' Table w/shelves	None
	Carpeting	None
	Glassware	None
	Flatware	None
	China	None
	Utensils	None
	Dispensers	None
	Vases	None
	Hostess Stands	None
	Wall Pictures	None
	Ceiling Hangings/Decor	None

BOND NO. _____

ATTACHMENT "D"
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, THAT _____
_____ as Principal, and _____
_____, a Corporation of the State of _____
authorized to do business in the State of Florida, as Surety, are held and firmly bound
unto DADE COUNTY, FLORIDA (hereinafter referred to as the County), for a period of
one year, the sum of _____ (\$ _____),
for the payment of which sum, well and truly to be made, the Principal and Surety bind
themselves, their heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

Signed and sealed this _____ day of _____, 19__.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the County, by Lease
Agreement, dated _____, and in consideration of
the rentals percentage fees, covenants and agreements contained therein to be paid and
performed by the Principal has granted unto said Principal the right to operate certain
concession facilities, in Amelia Earhart Park, and more fully described in said Lease
Agreement for a term as set forth in said Agreement, which Agreement is made a part
hereof by reference. This Bond shall be effective for the period _____
_____ through _____.

NOW, THEREFORE, if the Principal, its executors, administrators, successors and assigns,
shall well and truly pay, or cause to be paid, the rentals and percentage fees and fully and
faithfully perform or cause to be performed the services as required by the Lease
Agreement, then this obligation shall be void, otherwise it shall remain in full force and
effect.

EXHIBIT E
WAIVER AND RELEASE FORMS

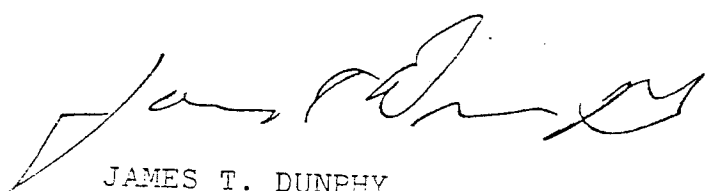
WAIVER AND RELEASE - BIDDER

The undersigned, GEORGE KUNDE ("Bidder"), understands that Dade County is relying on information contained within this response. The Bidder warrants that the information contained herein is accurate and that Bidder has made all investigations adequate to satisfy Bidder about all matters related to its proposal and has not materially or substantially relied on information provided by the County.


The undersigned Bidder grants the County the right to make any investigation regarding the Bidder; its officers, directors and managers; related companies; credit background; criminal background; past and existing litigation; ethical and moral background and any other areas as the County may decide. The undersigned Bidder waives confidentiality, releases and holds blameless the County from any liability arising out of such investigation and waives any defense against the County in any action relating to such investigations.

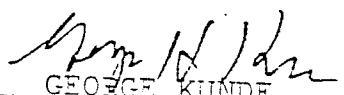
It is expressly understood by the Bidder that evaluations in awarding an Agreement are based on objective and subjective criteria. In addition, alternate or additional service will be considered upon submission; however, such changes or additions will be critically examined and may or may not be accepted regardless of merit.

Bidder agrees to waive its right to attend any meeting at which the Proposal of any other bidder is being presented.


JAMES T. DUNPHY

Secretary


GEORGE KUNDE
Bidder's Name


GEORGE KUNDE
President

(SEAL)

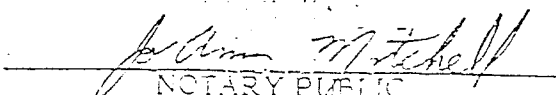
STATE OF FLORIDA)
) SS
COUNTY OF DADE)

BEFORE ME, the undersigned authority, authorized to take oaths and acknowledgements, personally appeared _____ authorized President of _____ ("Bidder"), known to me, and he acknowledged that he signed the above Agreement for the purposes herein stated.

SWORN TO AND SUBSCRIBED BEFORE ME this 22 day of JUNE, 1988.

My Commission Expires

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. AUG 10, 1991
BONDED THRU GENERAL INS. CO.


NOTARY PUBLIC
State of Florida at Large

WAIVER AND RELEASE - AFFILIATED PARTY

The undersigned party, affiliated with George Kunde ("Bidder") understands that Dade County is relying on information contained within this response. The undersigned warrants that the information contained herein is accurate and that undersigned has made all investigations adequate to satisfy undersigned about all matters related to its proposal and has not materially or substantially relied on information provided by the County.

The undersigned grants the County the right to make any investigation regarding the undersigned; its officers, directors and managers; related companies; credit background; criminal background; past and existing litigation; ethical and moral background and any other areas as the County may decide. The undersigned waives confidentiality, releases and holds blameless the County from any liability arising out of such investigation and waives any defense against the County in any action relating to such investigations.

It is expressly understood by the undersigned that evaluations in awarding an Agreement are based on objective and subjective criteria. In addition, alternate or additional service will be considered upon submission; however, such changes or additions will be critically examined and may or may not be accepted regardless of merit.

The undersigned agrees to waive their right to attend any meeting at which the Proposal of any other Bidder is being presented.

JAMES T. DUNPHY
Print Name

DIRECTOR
Position or Relationship

6710 S. W. 88th Street
Resident Street Address

MIAMI, FLORIDA 33156
City, State, Zip Code

Business Street Address

City, State, Zip Code

027-30-8715
Social Security Number
(or other identifying number)

6-30-46
Date of Birth

6-21-88

Date

Signature

(THIS FORM MAY BE REPRODUCED AS NECESSARY.)

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

BEFORE ME, the undersigned authority, authorized to take oaths and acknowledgements, personally appeared JAMES AUGUST, an affiliated party to (Bilder), known to me, and (s)he acknowledged that he signed the above Agreement for the purposes herein stated.

SWORN TO AND SUBSCRIBED BEFORE ME this 22 day of JUNE

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. APR. 24 1981
Commission Expires BONDED THRU GENERAL INS. UND.

Wanda Carr
NOTARY PUBLIC
State of Florida at Large